IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

FAO.No. 211 of 2007()

AS.122/1999 of ADDL.DISTRICT COURT-I,MAVELIKKARA
OS.290/1995 of MUNSIFF COURT, MAVELIKKARA

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APPELLANTS/RESPONDENTS 1 & 2 ADDITIONAL PLAINTIFFS

1. SUSAMA KOSHY
   PUTHENTHARAYIL, THAZHAKARA MURI, MAVELIKARA.

2. ASHISH JOHN
   PUTHENTHARAYIL, THAZHAKARA MURI, MAVELIKARA.

BY ADV. SRI.K.SASIKUMAR
SMT.RINNY STEPHEN.

RESPONDENTS: APPELLANT & RESPONDENTS 3 TO 6 DEFENDANTS 1 TO 5

1. T.E. GEORGE @ EASO GEORGE
   QUALITY TRADERS, MES CENTRE,
   BANERJEE ROAD, KOCHI.

2. THE STATE OF KERALA REPRESENTED BY
   DISTRICT COLLECTOR, ALAPUZHA.

3. THE ASSISTANT DIRECTOR OF RESURVEY,
   CHENGANNUR.

4. THE TAHSILDAR, MAVELIKARA.

5. THE VILLAGE OFFICER, THAZHAKARA.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 05/12/2007, ALONG WITH FAO.208/2007 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

F.A.O.Nos.208, 209, 210 & 211 of 2007

Dated this the 5th December, 2007.

J U D G M E N T

These four appeals are filed by respondents 1 and 2 in A.S.No.121/1999 and connected appeals, on the file of the Additional District Court-I, Mavelikara. Appellants herein are the plaintiffs in O.S.Nos. 153/1995, 541/1998, and 290/1995 respectively, on the file of the Munsiff's Court, Mavelikara, and defendants 1 and 2 in O.S.No. 540/1998, on the file of the Munsiff's Court, Mavelikara. All the four suits were tried jointly. The suits filed by the appellants herein decreed and O.S.No.540/1998 filed against the appellants were dismissed. Challenging the decrees and judgments, the defendants in the suits filed A.S.No.121/99, A.S.122/99, A.S.No.124/99. The plaintiffs in O.S.No.540/1998 filed A.S.123/99. Challenging the common judgment and decree so far it went against them.

2. The lower appellate court considered the contentions raised in the appeal. It set aside the decrees and judgments passed by the trial court and remanded all the four suits back to the trial court for fresh disposal, in accordance with law. The appellants have filed

these appeals mainly on the ground that immediately after the remand, respondents started committing active waste in the properties.

2. Appeals were admitted and on 20.7.2007, I directed both sides to maintain the statusquo, and that order is still in force.

3. It is submitted by the counsel for the appellants that in page 62 of the judgment of the lower appellate court, it has directed the parties to take out a fresh Commission to identify the property, on the basis of the documents and also on the basis of the old survey and re-survey plan and locate the properties by showing the existence of the building, well, pump house, car shed, compound wall and also assessing their age. It is argued that immediately after the remand passed by the lower appellate court, respondents demolished the car shed, compound wall and committed active waste. It is argued that on account of the acts committed by the respondents, that part of the order by which the direction of the trial court to locate the properties by showing the permanent structures may not be possible. It is pointed out that immediately after the remand, a Commissioner was deputed and Commissioner has filed a report

stating the present state of affairs of the property and also the mischiefs stated to have been committed by the respondents. All these allegations are denied by the counsel for the respondent. It is argued that the allegation that the respondents committed active waste is false and it was the appellants who committed the waste. It is argued that the appellants filed a number of false criminal cases against the respondents and they were acquitted of those offences. It is argued that at the instance of respondents also, a commissioner was deputed who filed a report and plan. I do not think it is necessary to consider the contentions raised by both sides on its merits in this appeal. It is open to both sides to raise all these contentions before the trial court. If, as a matter of fact, any of the permanent structures referred to in the judgment of the lower appellate court are not in existence, it is only just and proper that the trial court moulds its relief and pass appropriate orders, in accordance with law, taking into account subsequent events, and dispose of the suits, untrammeled by any of the observations contained in the judgment of the lower appellate court.

I have carefully gone through the order of remand passed by the lower appellate court. I do not find any grounds to interfere with the findings of the lower appellate court. No substantial question of law arises in this appeal. So, the appeals are only to be dismissed. With the above observation, the order of remand passed by the lower appellate court is maintained. I make it clear that unless and until the trial court dispose of the suit, the direction to maintain status quo shall be in force.

The appeals are disposed of with the above observations.

K.PADMANABHAN NAIR,
JUDGE

nj.